

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SKYLINE POTATO COMPANY, INC.,)

Plaintiff,)

v.)

C.A. No. 1:10-cv-00698-CG-RHS

TAN-O-ON MARKETING, INC. d/b/a)

TMI; HI-LAND POTATO COMPANY,)

INC.; GERALD R. ANDERSON;)

JULIE A. ANDERSON; MARK)

LOUNSBURY; BILL METZ; and CARL)

WORLEY,)

Defendants.)

BRIEF IN SUPPORT OF THE MOTION TO DISMISS
AS TO DEFENDANT BILL METZ

COMES NOW the Individual Defendant, Bill Metz, and for his Brief in Support of his Motion to Dismiss states as follows:

1. The Complaint was filed in this matter on July 23, 2010. In the caption of the Complaint, an individual named Bill Metz was named. He was served with the Complaint.
2. The entire Complaint, including each and every allegation contained therein does not include any factual or legal allegations against the Individual Defendant Bill Metz. Bill Metz is not identified as a party to the case. *See*, Complaint at ¶¶ 1-21.
3. There are no facts or allegations made against the Individual Defendant, Bill Metz. *See*, Complaint at ¶¶ 22-110.
4. Furthermore, because the Defendant was not identified as a party in this case, any argument that the generic reference of “Defendants” also includes Bill Metz is incorrect. The style of the case does not create factual allegations against the Defendant. Pursuant to Rule 12(b), it is the allegations properly plead in the Complaint that must serve as the basis for any

cause of action. The Defendant Bill Metz is not identified in the Complaint as a party to the action, has no allegations made against him and, therefore, should be dismissed as a matter of law.

Respectfully submitted,

THE ROWE LAW FIRM, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of September, 2010, the foregoing pleading was electronically filed with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system.



Gordon H. Rowe III